

# Exhibit

# 5

1 FEDERAL TRADE COMMISSION

2

3 In the Matter of: )

4 AMAZON.COM, INC. ) No. 2123050

5 \_\_\_\_\_)

6

7 October 21, 2022

8

9 Investigational Hearing

10 NEIL LINDSAY

11

12 Federal Trade Commission

13 10990 Wilshire Boulevard, Suite 400

14 Los Angeles, California

15

16

17

18

19

20

21

22

23

24 STENOGRAPHICALLY REPORTED BY: DEBORAH R. MEYERS  
CSR No. 8569

25

Lindsay

Amazon.com, Inc.

10/21/2022

1 after your tenure at Prime began; right?

2 A Sounds about right.

3 Q And you requested a review of something called  
4 the Customer Frustrations Elimination program; correct?

5 A Possibly.

6 Q Do you remember one way or the other?

7 A Not specifically.

8 Q Did you request a review of, to put it more  
9 generally, frustrations that customers were expressing  
10 about Prime?

11 A I was new to the program. I requested a review  
12 of a great deal of things. So that could be possible.

13 Q Assuming you did it -- and we will get to it in  
14 a moment -- but why would it have been important to you  
15 as a new executive in Prime to understand what those  
16 customer frustrations were?

17 MS. RODGERS: Objection to form.

18 THE WITNESS: It was four years ago. I can't  
19 speculate on what I was thinking at that time.

20 MR. COHEN: Let's mark as NL-1 an email from  
21 Mr. Jason Brightman to various parties, including  
22 Mr. Lindsay, dated June 12, 2018. I'm going to give a  
23 copy to the witness as well as a copy to counsel.

24 MS. RODGERS: Is it possible just to read the  
25 Bates number into the record for clarity?

Lindsay

Amazon.com, Inc.

10/21/2022

1 MR. COHEN: Sure. It is AMZN\_28700, and if I  
2 forget to do that in the future, please remind me.

3 MS. RODGERS: Thank you so much.

4 And I just want to note I see that some of  
5 these documents have an Amazon privileged and  
6 confidential stamp on them. I know there's been some  
7 back and forth on this, Jonathan, and I just want to  
8 make clear that we're not waiving any rights as to  
9 privilege, but I don't want to hold things up today.  
10 So, please --

11 MR. COHEN: I'll do better than that. So we'll  
12 stipulate on the record that the use of any document  
13 that has any indication of privilege or confidential  
14 during this investigational hearing waives nothing at  
15 all on behalf of Amazon if all that is done is just sort  
16 of ask the witness.

17 If we have some sort of further discussion  
18 about it, then maybe there's a waiver, but as long as we  
19 just move forward, absolutely, positively no waiver by  
20 virtue of the use of the document here.

21 MS. RODGERS: I appreciate that.

22 (FTC Exhibit NL-1 was marked for  
23 identification.)

24 BY MR. COHEN:

25 Q Mr. Lindsay, I'm going to direct you to the

Lindsay

Amazon.com, Inc.

10/21/2022

1 first page, and that's a meeting invitation; correct?

2 A Yes, it appears to be.

3 Q And the sentence says:

4 "In an April 19 review of the Customer  
5 Frustrations Elimination program, Neil asked a  
6 Deep Dive on status of Prime-related  
7 frustrations."

8 A Yes, I see that.

9 Q And does that refresh your recollection about  
10 the fact that you did, in fact, review the Customer  
11 Frustrations Elimination program?

12 A It appears I did.

13 Q And that you had asked for a deep dive on  
14 status of Prime-related frustrations?

15 A Yes.

16 Q And then for the reasons you already testified,  
17 it seems like a reasonably responsible thing for  
18 somebody to do who's been there for a couple of months?

19 MS. RODGERS: Objection to form.

20 THE WITNESS: It's reasonable for me to  
21 understand the Prime business in many different  
22 dimensions, this being one of them.

23 BY MR. COHEN:

24 Q You also asked for a deep dive. This is the  
25 next sentence. I'll read it:

Lindsay

Amazon.com, Inc.

10/21/2022

1           Mr. Lindsay, you responded in part by  
2     requesting that Mr. Ghani prepare or cause to be  
3     prepared a memoranda; right?

4           A     Yes.

5           Q     And it's your understanding that a draft of  
6     that memoranda was subject to your review on or about  
7     February 11; correct?

8           A     I reviewed on or about February 11. I actually  
9     don't know if this is a response to that request  
10    specifically as opposed to just an opportunity for me to  
11    review.

12          Q     You would agree with me, though, that there's  
13    at least some degree of alignment between the general  
14    topics the memorandum that is Neil Lindsay-10 covers and  
15    the questions that Mr. Ghani raises in Neil Lindsay-9?

16          A     The topics are related.

17          Q     So whether you know for sure, you would at  
18    least give me that it's plausible that Neil Lindsay-10  
19    is in some sense an outgrowth of Neil Lindsay-9?

20                MS. RODGERS: Object to form.

21                THE WITNESS: Again, the topics are related.  
22    Whether it's a direct outgrowth or not of a rapid email  
23    exchange, I'm not 100 percent sure.

24    BY MR. COHEN:

25          Q     And then in this we're getting into the

Lindsay

Amazon.com, Inc.

10/21/2022

1 somewhat more tricky part. This document that is  
2 attached as part of Neil Lindsay-10 became in some form  
3 or another the basis for a meeting with Mr. Clark, and  
4 that's just a yes-or-no question.

5 MS. RODGERS: Well, there's some predicates  
6 baked in there about what was discussed at that meeting,  
7 which then does implicate privilege. So can we just  
8 take a pause and go off the record and talk about it?

9 MR. COHEN: Yeah, go talk about it. Go talk  
10 about it. If you want us to excuse ourselves, that's  
11 fine, or if you want to go out in the hallway, that's  
12 fine too.

13 MS. KIM: Is there anyone in the office today  
14 besides us?

15 MR. COHEN: Maybe not. Maybe we could find you  
16 guys a better spot.

17 THE STENOGRAPHIC REPORTER: Are we off the  
18 record?

19 MR. COHEN: We're off the record, sorry.  
20 (Recess taken from 3:45 p.m. to 4:22 p.m.)

21 MR. COHEN: Let's go back on the record.  
22 And before we start question and answer,  
23 counsel would like to make a statement.

24 MS. RODGERS: Thank you. I just wanted to note  
25 that we have some concerns about privilege including

Lindsay

Amazon.com, Inc.

10/21/2022

1 regarding Exhibits 9 and 10. They're just going to take  
2 a little time for us to kind of track down and get to  
3 the bottom of. We don't want to delay things today or  
4 hold things up unnecessarily.

5 And in the interests of moving forward, I just  
6 want to be clear, based on what you said at the outset,  
7 that testimony about a document that we later withhold  
8 as privileged isn't going to constitute waiver of that  
9 privilege or prejudice us in any respect, including from  
10 later asserting privilege over the document.

11 Also just note that this is another reason why  
12 we do think that having in-house counsel present would  
13 be helpful in this process.

14 MR. COHEN: And let me respond just in one  
15 limited respect because I think we're on the same page  
16 here, and my understanding of what we not just suggested  
17 but agreed to is that you will be in no way prejudiced.  
18 You reserve all of your rights. We will not argue that  
19 the fact that you allowed the testimony to continue with  
20 respect to those documents means that you cannot claw  
21 them back or make any other arguments with respect to  
22 those documents.

23 However, it does not necessarily mean that  
24 whatever arguments you make we will necessarily agree  
25 with, just you will not be prejudiced in any way by



Lindsay

Amazon.com, Inc.

10/21/2022

1 virtue of what happened today.

2 So I don't know that we would say this, but if  
3 we want to say your clawback request is no good because  
4 of something that happened three months ago, we're  
5 entitled to make that argument, and you're entitled to  
6 respond. We just won't argue that anything that  
7 happened today in any way works against you.

8 MS. RODGERS: I guess I just want to make sure  
9 I'm clear. Are you agreeing that both the testimony --  
10 like if we claw back the document, the testimony about  
11 it is also effectively clawed back and does not  
12 constitute a waiver therefor of like what we're saying?  
13 I know we might fight about whether that clawback is  
14 valid, but to the extent it's upheld, we would, of  
15 course, expect you to respect that.

16 MR. COHEN: I agree with the principle that if  
17 the clawback is upheld, that testimony that is  
18 appropriately or sufficiently connected to the document  
19 is also sort of clawed back. We may disagree about  
20 exactly which lines of testimony, and we would have to  
21 work that out, and that kind of thing happens  
22 periodically.

23 We may take the position that we're willing to  
24 accept the clawback but, as a result, we're entitled to  
25 ask something else or have some other limited additional

Lindsay

Amazon.com, Inc.

10/21/2022

1 REPORTER'S CERTIFICATE

2

3 I, DEBORAH R. MEYERS, CSR NO. 8569, a Certified  
4 Shorthand Reporter in and for the State of California,  
5 do hereby certify:

6 That said Reporter's Transcript of  
7 Investigational Hearing was taken by me in stenographic  
8 shorthand at the time and place herein named and was  
9 thereafter transcribed into printed format under my  
10 direction, said transcript being a true and correct  
11 transcription to the best of my ability.

12 I further certify that I have no interest in  
13 the outcome of this action.

14 The dismantling, unsealing, or unbinding of the  
15 original transcript will render the Reporter's  
16 Certificate null and void.

17 Dated this 2nd day of November, 2022.

18

19

20

21 s/Deborah R. Meyers  
22 DEBORAH R. MEYERS  
23 CSR NO. 8569

24

25